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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,064	09/13/2000	Donald Eugene Brodnick	GEMS8081.040	7626

27061 7590 07/17/2003

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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 07/17/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/661,064

Applicant(s)

BRODNICK ET AL.

Examiner

George R Evanisko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/5/03 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 11-13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Murphy (WO 98/40009).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4-6, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn (5564429).

Bornn discloses the claimed invention including using different configuration of electrodes except for the 12 lead wire assembly and processing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ECG monitoring system as taught by Bornn, with a 12 lead wire assembly and processing since it was known in the art that ECG monitoring systems use 12 lead wire assemblies and processing to provide a complete and easily readable ECG data record for determining cardiac conditions and for allowing more accurate diagnoses of patient conditions.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over David et al (5544649).

David discloses the claimed invention including except for the 12 lead wire assembly and processing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ECG monitoring system as taught by David, with a 12 lead wire assembly and processing since it was known in the art that ECG monitoring systems use 12 lead wire assemblies and processing to provide a complete and easily readable ECG data record for determining cardiac conditions and for allowing more accurate diagnoses of patient conditions.

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Claims 3 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn (or David or Murphy).

Bornn (or David or Murphy) discloses the claimed invention except for the wireless interface being an interactive internet TV appliance allowing voice, video, and ECG transmission concurrently (claim 3), having an interactive internet appliance transmit the voice, video, and ECG data (claims 7-9), and using infrared transmitters and receivers to communicate between the appliance and interface (claim 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the remote monitoring ECG system as taught by Bornn (or David or Murphy), with the wireless interface being an interactive internet TV appliance allowing voice, video, and ECG transmission concurrently, having an interactive internet appliance transmit the voice, video, and ECG data, and using infrared transmitters and receivers to communicate between the appliance and interface since it was known in the art that remote monitoring ECG systems use the wireless interface being an interactive internet TV appliance allowing voice, video, and ECG transmission concurrently or having an interactive internet appliance transmit the voice, video, and ECG data as a way to easily and quickly transfer large amounts of voice, video, and data concurrently over existing communication networks and since it was known in the art that remote monitoring ECG systems use infrared transmitters and receivers to communicate between different elements to provide ease of use of monitors for transmission of data over short distances without the burden of transmission lines potentially getting tangled.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn (or David or Murphy) in view of Morgan et al (5782878).

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Bornn (or David or Murphy) discloses the claimed invention except for a GPS system connected to the communication interface and being enabled by the processor when a signal is received by the healthcare provider. Morgan teaches that it is known to have a GPS system connected to the communication interface to allow the remote determination of the location of a patient by the health care provider. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the monitoring system as taught by Bornn (or David or Murphy), with a GPS system connected to the communication interface as taught by Morgan, since such a modification would provide an monitoring system with a GPS system connected to the communication interface to allow for the remote determination of the location of a patient by the health care provider. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the monitoring system as taught by Bornn (or David or Murphy) in view of Morgan, with the GPS system being enabled by the processor when a signal is received by the healthcare provider since it was known in the art that monitoring GPS systems are programmed to allow the processor to enable the GPS system by a signal from the healthcare provider to allow the provider to enable the GPS system to locate a patient when the patient is distressed and unable to communicate his/her location.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The argument that the declaration under 1.131 is a properly formatted declaration is not persuasive since the declaration does not state that all statements are "true".

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The argument that David teaches that the transmitter is located remotely from the receiver and the applicants invention is integrated into a single device is not persuasive since the claims do not state the apparatus is integrated into a single device, only that the communication interface is "coupled" to receive patient data. The interface device of David is "coupled" to receive data from the monitor through radio signals.

The argument that Bornn teaches a series of paired electrodes and one skilled in the art would readily recognize the distinctions between a paired electrode system and a 12 lead wire assembly is not persuasive since the examiner has recognized there is a difference and therefore provided the 103 rejection. In addition, Bornn recognizes, in column 9, that multiple different ECG electrodes and configurations are possible and can be used in his system. Finally, Murphy is one teaching of many that shows the use of a portable monitor using 12 lead wire assemblies and processing and provides a teaching for the 35 USC 103 rejections that it is well known in the art to use 12 lead wire assemblies.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703 306-4520 for regular communications and 703 306-4520 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.


George R Evanisko
Primary Examiner
Art Unit 3762

6/27/3

GRE
June 27, 2003